IN THE HIGH COURT OF JUDICATURE AT MADRAS.

DATED: 10/10/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR.
AND
THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN.

TAX CASE No. 209 of 1986 and TAX CASE No. 210 of 1986.

Shri M.Ct.Muthiah, HUF-II,
110,Coral Merchant Street,
Madras.
...Applicant in
T.C.209/1986.
-Vs-

The Commissioner of Income
Tax, Tamilnadu-I, Madras.

..Respondent in
T.C.209/1986.
...
The Commissioner of
Income Tax, Tamil Nadu-I,
Madras.
...Applicant in
T.C.210/1986.
.vs.

Shri M.Ct.Muthiah (HUF-II),
Madras.
...Respondent in
T.C.210/1986.

Tax Cases filed against the order of the Income Tax Appellate
Tribunal dated 15.1.1985 and made in R.A.Nos. 1066 and 1109 (Mds) of 1984
(I.T.A.No.751/Mds/83).

!For Applicant ..... Mr.R.Meenakshisundaram.
in T.C.209/86 and
respondent in
T.C.210/86.

^For Respondent ..... T.C.A.Ramanujam
Sr.Standing Counsel For I.T
T.C.210/86 and
for applicant in

T.C.210/86.

:JUDGMENT

N.V.BALASUBRAMANIAN,J.

T.C.No.209/86 is a reference at the instance of the assessee, and T.C.No.210/86 is a reference at the instance of the Revenue and the assessment year involved in both the Tax Cases is 1978-79. We dispose of both the Tax Cases by this common judgment for the convenient sake.
2.The Income Tax Appellate Tribunal hereinafter referred to as ' the Tribunal', at the instance of the assessee has stated a case and referred the following question under Section 256(1) of the Income Tax Act, 1961.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Inspecting Assistant Commissioner had jurisdiction under section 144B of the Income Tax Act 196 1 to direct the Income Tax Officer to include a sum of Rs.1,51,152/- as income from horse racing in computing the total income of the assessee which sum was not originally included by the Income Tax Officer in his draft assessment order, for the assessment year 1978-79?"

3. The following questions of law are referred by the Tribunal, at the instance of the Revenue in relation to the same assessment year 1 978-79:

1.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the income derived by the assessee from lease of horses and sale of horses arising out of a "hobby" and cannot be taxed under the Income Tax Act?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the horses constituted ' personal effects of the assessee within the meaning of Section 2(14)(ii) and therefore, the gains arising from their sale cannot be taxed under the head 'capital gains'?.

4. The Tax Case No. 209/86 at the instance of the assessee raises the question of jurisdiction of the Inspecting Assistant Commissioner in the draft assessment proceedings under Section 144B of the Act, and the Tax Case No.210/86, at the instance of the Revenue, raises the question of the taxability of receipts derived by the assessee from the sale and lease of the race horses which were claimed by the assessee as receipts from the hobby of the assessee.
5. The assessee is a Hindu Undivided Family consisting of M.Ct. Muthiah, his wife and children. For the previous year ended 31.3.1978, relevant to the assessment year 1978-79, the assessee filed a return declaring a total income of Rs.25,480/-. The assessee claimed a loss of Rs.19,870/- under the head "winnings from horse races" computed separately and carried

forward the same.
6. The Income Tax Officer, while considering the case of the assessee directed the assessee to furnish particulars of the race horses owned by it, the date of purchase, amounts paid, sources for purchase consideration and the expenditure incurred on each of the race horses. The assessee sent a reply stating that the assessee was the owner of the race horses and they were purchased during the previous year relevant to the assessment year 1978-79 giving details of the dates of purchase of the horses. The assessee thereafter was asked to explain how it was able to meet the losses claimed by it for the earlier assessment years and it was also directed to furnish the details of deposits with Bank of Madura. Thereafter, the assessee came forward with the reply stating that in addition to three horses, it was owning 8 breed mares, which were not in the racing and also furnished the statement for the purchases from the year 1964. It was found that the assessee has received a sum of Rs.42,111/- from the Bangalore Turf Club and another sum of Rs.85,000/- from Bangalore Turf Club which were kept as fixed deposit with another company. The Income-tax Officer also found that certain sums were received by Mrs. Muthiah from the Bangalore Turf Club and it was also found that the assessee was having extensive activities in maintaining race horses and has not made a consolidated account. The Officer also found in making the draft assessment that the assessee has not explained the sources for the expenditure and maintenance of the horses and the mares and the assessee had not furnished full details for making a proper assessment. The assessing officer found that the sources for the purchase of the two horses and the source for the loss claimed in the racing account required explanation and in the absence of explanation, the amount of Rs.1,53,250/- was treated as income from undisclosed source. The assessing officer made a draft assessment and sent the draft assessment order to the assessee seeking its explanation, and the assessee gave its explanation for the source for the purchase of the horses and also for the sources for the loss claimed in the racing account. The Income Tax Officer forwarded the draft assessment order together with the objections raised by the assessee to the Inspecting Assistant Commissioner and the Inspecting Assistant Commissioner on scrutiny of the accounts found that the assessee had not only purchased the horses in the auction sales, but also auctioned horses which were reared in the stables and it had won stake money and sold horses also. According to the assessee, two accounts were maintained on behalf of the assessee by the Madras Race Club, one of which was called racing account wherein the various expenses incurre d by the Race club on behalf of the assessee were debited and various amounts received as stake moneys were credited . There was another account called breeders account and the expenses incurred by the Madras Race Club in maintaining the race horses were debited and the amounts received from the sale of the horses were credited. The assessee also enclosed accounts maintained in the Bangalore Race Club along with the explanation for the source of the funds for the purchase of race horses. The Inspecting Assistant Commissioner found that the assessee was maintaining a racing stable and it purchased offspring of race horses and reared them in the stable. It was also found that the horses were used for running in the horse races and after the racing capacity was over, they were used to rear the colts or fillies. It was found that normally racing period for fillies is about 4 years and for colts it is about 5 years. It was also found that some of the horses in the assessee's stable during the

period were leased out and the lessees maintained the horses at the lessee's cost and used them in the horse races and the lease amounts were also paid to the assessee. The Inspecting Assistant Commissioner found that the income from the sale of race horses and lease of the race horses were taxable. The assessee objected to the treatment of the income from the sale of horses and lease of horses on the ground that the racing is the hobby and the horses are the personal effects of the assessee and hence they are not capital assets and the sale proceeds do not give rise to any capital gains. The assessee also raised an objection that there is no cost of acquisition either in the case of colts or fillies and in the absence of cost of acquisition they are not liable for capital gains. The main case of the assessee was that the amounts received on lease or sale of the horses are not taxable as the receipts are incidental to the activity of hobby carried on by the assessee as the owner of the horses. The Inspecting Assistant Commissioner rejected the contentions of the assessee on the ground that the assessee's claim that racing is its hobby cannot be entertained as the assessee is a Hindu Undivided Family and it is incongruous to say that the Hindu Undivided Family can have a hobby. The Inspecting Assistant Commissioner held that even assuming that the kartha of the Hindu Undivided family can have a hobby, but that cannot be held to be the hobby of a Hindu Undivided Family. The Inspecting Assistant Commissioner also found that there were 11 horses in the stable and 3 were in racing and 8 in the stud farm including the mares and offspring. It was found that the assessee was engaged in rearing good offspring which could compete well in the races. He held that the maintenance of race horses was a highly specialised field of activity which required extensive knowledge on the horses which run in races and their speed and performance in the race are material. The Inspecting Assistant Commissioner found that a great deal of time, money and energy are spent in organising the activity and it is done on a commercial scale and the scale of action can be gauged from the receipts by way of stake money, the sale price and the lease income. The Inspecting Assistant Commissioner therefore held that the receipts are taxable not under the head, 'business income', but under the head, 'income from other sources'. The Inspecting Assistant Commissioner has found that the Income Tax Officer has reported a sum of Rs.1,22,500/- as the income derived from lease of horses and there was also excess of the expenditure over the receipts of a sum of Rs.28,652/- as net income from the lease of the horses. The Inspecting Assistant Commissioner therefore gave a direction to include both the receipts as income from the racing and passed order accordingly.

7. On the basis of the directions given by the Inspecting Assistant Commissioner, the Income Tax Officer completed the assessment under Section 143(3) read with Section 144(B) of the Act treating the income from racing accounts viz.,Rs.1,51,152/- as income from other sources.

8. The assessee preferred an appeal against the order of assessment before the Commissioner of Income Tax (Appeals), Chennai. The assessee raised two objections before the Commissioner of Income Tax (Appeals). The first objection raised was that the Inspecting Assistant Commissioner has no jurisdiction to give a direction to include a sum of Rs.1,51,152/- as those items were not the subject matter in the draft assessment order. The second objection raised was that the amount in any event cannot be regarded as the income from other sources and the income from the sale and lease of horses were incidental to the hobby of the assessee of

owning horses.
9. The Commissioner of Income Tax (Appeals) rejected both the contentions and held that the Inspecting Assistant Commissioner did not exceed her jurisdiction under Section 144 B of the Act in giving the directions. The Commissioner of Income Tax (Appeals) also rejected the contention that the income arose from the hobby. The Commissioner of Income Tax also held that the activities of sale and lease of the horses were done on a commercial scale and since the assessee spent considerable time, energy and money in the activity of maintaining the horses and earning income therefrom, the receipts arising therefrom would be taxable. He also held that since the assessee was regularly buying and selling horses and the offspring, the receipts arising from the sale and lease of the horses would constitute the income of the assessee. The Commissioner of Income Tax (Appeals) noticed the provision of Section 74A(3) of the Act and held that the income from the sale and lease of horses should be assessed under the head 'other sources' and not either under the head 'capital gain' or under the head 'business'. He therefore held that the Income Tax Officer was justified in assessing the income under the head 'other sources' and thus, dismissed the appeal preferred by the assessee.
10. The assessee carried the matter in further appeal before the Income Tax Appellate Tribunal, Chennai and before the Tribunal also the assessee raised the same contentions which were raised before the Commissioner of Income-tax (Appeals); one on the question of jurisdiction and another on the question of merits. The Appellate Tribunal held that the Inspecting Assistant Commissioner was well within her jurisdiction in giving a direction in respect of the taxability of the receipts from the sale and lease of the horses. However, on merits the Tribunal held that the activity of the assessee was only a hobby and the receipts arising from the hobby cannot be regarded as its income. The Tribunal therefore held that there was no material to indicate that the activities were carried on by the assessee for the purpose of earning the income. As far as Section 10(3) of the Act is concerned, the Tribunal held that Section would apply only if the receipts are income in nature and since the receipts are not income in nature, Section 10(3) of the Act has no application to the facts of the case. The Tribunal also held that Section 74A of the Act has no application as Section 74A deals with the loss arising from the running of race horses and the said provision is confined to earning of stake money and the receipts by way of leasing of the horses or by way of the sale of horses are not covered under Section 74A of the Act. The Tribunal also gave a direction that the maintenance expenditure of the horses should be set off against the stake money winnings received from the betting of horses and not from the lease income or the capital gain arising from the sale of horses. The Tribunal also held that there was no cost of acquisition for the fillies or the colts as they were nature's bounty and did not have any cost of acquisition and therefore the sale of the horses did not result in capital gain. The Tribunal therefore held that the income from the horse races has to be computed only with reference to the receipts by way of stake money and winnings from betting the horses and in this view of the matter, the Tribunal set aside the order of the Income Tax Officer and directed him to re-compute the income taxable under the other sources separately. The Tribunal allowed the appeal in part preferred by the assessee. It is against this order of the Appellate Tribunal,the assessee as well as the Department has come in reference before us.

11. Mr.R.Meenakshisundaram, learned counsel appearing for the assessee submitted that the Inspecting Assistant Commissioner had no jurisdiction at all to give a direction to assess the receipts from the sale or lease of the horses. According to him, the Income Tax Officer in the draft assessment order has dealt only with three items, namely, the sources for the purchase of the two race horses and the source for the loss claimed under the racing account and the assessee in his explanation dated 14.4.1981 has fully explained the sources for the sum of Rs.1,53,250/- which was proposed in the draft assessment order and the Inspecting Assistant Commissioner has also noticed that the Income Tax Officer on scrutiny of the account has reported that the sum of Rs.1,53,250/- was fully explained. He therefore submitted that the direction given by the Inspecting Assistant Commissioner was not in relation to the draft assessment order and the directions were given by the Inspecting Assistant Commissioner in respect of a matter not covered in the draft assessment order and his submission was that the direction should be confined only to the matters considered in the draft assessment order and it is not open to the Inspecting Assistant Commissioner to give a direction in respect of an item not covered in the draft assessment order.

12. Mr.T.C.A.Ramanujam, learned senior standing counsel appearing for the Department has submitted that the the subject matter dealt with by the Inspecting Assistant Commissioner was not at all different from what was proposed by the Income Tax Officer and since the proposed addition made by the Inspecting Assistant Commissioner was in relation to the race horses owned and maintained by the assessee, the Inspecting Assistant Commissioner was well within her jurisdiction in issuing the direction in respect of the taxability of the receipts from sale or lease of race horses owned and maintained by the assessee. He also submitted that while the Income Tax Officer in the draft assessment order suggested a source of income of Rs.1,53,250/- on account of the race horse, the Inspecting Assistant Commissioner has quantified a smaller amount of income from races viz., Rs.1,51,252/- and the assessee is not prejudiced in any manner and therefore, it cannot be said that the Inspecting Assistant Commissioner had acted beyond the jurisdiction in giving a direction to assess the income of Rs.1,51,2 52/- as income from other sources.

13. We have carefully considered the submissions of the learned counsel for the parties. Section 144B of the Act deals with the procedure when the Income Tax Officer proposes to make any variation to the income or loss returned by the assessee, which is prejudicial to the interest of the assessee and where the amount of such variation exceeds the ceiling limit fixed by the Central Board of Direct Taxes. Under section 144-B of the Act, the Income-tax Officer is first required to make draft assessment order and forward the proposed draft assessment order to the assessee for its objections. If the assessee does not file or intimate its objections to the proposed draft order of assessment within the stipulated period, it is open to the Income Tax Officer to complete the assessment on the basis of the draft assessment order. However, on receipt of the draft assessment order, it is open to the assessee to forward its objections to the draft assessment order to the variation of income suggested by the Income Tax Officer within the time prescribed in the Act. Sub Section (4) of Section 144B deals with the procedure in case where the objections are received from the assessee to the draft assessment order and the said sub section (4) of Section 144B reads as

under:-
144b(4)- If any objections are received,the Income-tax Officer shall forward the draft order together with the objections to the Inspecting Assistant Commissioner and the Inspecting Assistant Commissioner shall, after considering the draft order and the objections and after going through (wherever necessary) the records relating to the draft order, issue, in respect of the matters covered by the objections, such directions as he thinks fit for the guidance of the Income Tax Officer to enable him to complete the assessment:

Provided that no directions which are prejudicial to the assessee shall be issued under this sub section before an opportunity is given to the assessee to be heard.

Under Section 144B(4) of the Act, if the assessee intimates its objections to the draft order of assessment, the Income Tax Officer is required to forward his draft assessment order together with the objections raised by the assessee to his next higher authority, viz., the Inspecting Assistant Commissioner and the Inspecting Assistant Commissioner is required to consider the following matters:-
i) The draft order of assessment.
ii) The objections raised by the assessee.
It is open to the Inspecting Assistant Commissioner to go through (wherever necessary) the records relating to the draft assessment order and he is empowered to issue directions in respect of the matters covered by the objections as he deems fit for the guidance of the Income Tax Officer to enable him to complete the assessment. Under the Proviso to sub section 4 of Section 144B of the Act, the Inspecting Assistant Commissioner is required to give an opportunity to the assessee if he intends to issue any direction which is prejudicial to the assessee. The rest of the provisions of Section 144B deals with the follow up procedure to be done by the Income Tax Officer and it says that the direction is binding on the Income Tax Officer and it also deals with the other matters which are specified in the other sub sections.
Sections 144A and 144B were inserted by the Parliament by the Taxation Laws (Amendment) Act, 1975 on the basis of the recommendations of the Wanchoo Committee. The said committee has recommended that the higher officer in rank in hierarchy of the officers of the Income Tax Department should be associated in the process of assessment so that the Inspecting Assisting Commissioner, who is higher in rank than that of the Income Tax Officer, is empowered to issue notice calling for the records from the Income Tax Officer and then issue directions for completion of assessment and the association of a higher officer in the pre-assessment proceedings would avoid the high pitch assessments that may be made by the Income Tax Officer. Section 144B like Section 144A of the Act is a procedural provision and both the Sections were introduced to operate as a check and balance against arbitrary assessment that may be made by the Income Tax Officer so that the faith of the tax payers in the revenue administration is maintained . It is not necessary to refer to the statement of objects or circulars issued by the Central Board of Direct Taxes explaining the scope, powers and duties of the Inspecting Assistant Commissioner as it is clear that Sections 144A and 144B were introduced with the object of preventing multiplicity of proceedings and unnecessary appeals.

The object of Section 144B is that the higher Officer is associated in the completion of assessment and the functions of the Inspecting Assistant Commissioner are not administrative in nature but are of quasi judicial in nature in the making and in the completion of the regular assessment. It is in the light of the object of the Act, the provisions of Section 144B has to be construed and interpreted.

14. The crucial words as found in Section 144B of the Act relevant for the purpose of the case are, "in respect of matters covered by the objections". There are four expressions employed in section144-B of the Act which are relevant for th f this case and they are as under: (i) draft order, (ii) objections of the assessee, (iii) the records relating to the draft order and (iv) matters covered by the objections. The crucial words found in section 144B of the Act are not terms of art with a specialised legal meaning, but they are ordinary English words. We are of the view that the employment of different expressions in the same sub section would indicate that they do not have the same meaning and different meanings should be given to the each one of the expressions. We are of the view that what is material to determine the scope of the jurisdiction of the Inspecting Assistant Commissioner is not the draft order of assessment or the objections raised by the assessee, but whether the direction is issued in relation to the matter covered by the objections. In our view, it is perfectly open to the Inspecting Assistant Commissioner to issue direction with respect to the matters covered in the objection raised by the assessee and he is not confined or limited to the various items of addition or disallowance made by the Income Tax Officer in the draft assessment order. In other words the powers of the Inspecting Assistant Commissioner are wide and his jurisdiction would extend to and encompass the matters which are covered in the objections raised by the assessee. The submission of Mr.R.Mee nakshisundaram, the learned counsel for the assessee that the Inspecting Assistant Commissioner is confined only to the three items mentioned in the draft order is not acceptable. The assessee has raised objections not only with reference to three items of income sought to be included in the draft assessment order but also explained the source for the purchase of the horses and its source of unexplained loss by the receipts by way of sales or lease of race horses. We also find that in the draft order of assessment made by the Income Tax Officer, while the Income Tax Officer has found that the assessee had claimed the losses, he has sought for an explanation how the assessee met the expenditure on maintenance of the three horses in racing, but the assessee has not explained how it met the expenditure on breeding of the mares and the assessee has not explained the total expenditure. In other words, the Income Tax Officer while making the draft assessment order has made objections regarding the conduct of the assessee in not explaining the sources for the purchase of the horses and the assessee while submitting its objection has referred to the maintenance of two accounts in the Madras Race Club, viz., racing account and breeders account, which clearly showed that the sale proceeds and the lease income from the horses were credited in the books of account of the assessee. Apart from that, the assessee has produced the account books maintained in the Bangalore Turf Club which showed the receipts of stake money as well as the sale and lease of race horses. Therefore, the subject matter of the draft assessment order is not merely confined to the three additions as contended by the learned counsel for the assessee, but it extends to the entire income from the

activities of racing carried on by the assessee. The assessee in its objection has referred to the account books, which clearly revealed the receipts from the sale and lease of the race horses. We hold that the Inspecting Assistant Commissioner has neither traversed beyond the draft assessment order, nor outside the objections raised by the assessee. The subject matter of draft order of assessment was the income from race horses and how it should be assessed and the account books produced by the assessee showed the receipts by way of sale or lease of the horses. We hold that the Inspecting Assistant Commissioner was perfectly justified in issuing a direction in respect of matters which are covered by the objections raised by the assessee. We find that the Inspecting Assistant Commissioner has not found any new source, but with reference to the same source of income and with reference to the objections raised by the assessee, the Inspecting Assistant Commissioner has given the directions.

15. The crucial words found in Section 144B of the Act are in respect of the matters covered by the objections. Now let us see some Dictionaries where some of the words are considered. It is no doubt true that the Supreme Court in number of cases has cautioned that it is not advisable to interpret the provisions of a statute by holding the words of the statute on one hand and the dictionary on the other. It is no doubt true that the dictionaries cannot solve the problem of interpretation. However, to consider the meanings of the phrase in respect of the matters covered by the objections, we thought it fit to refer to some of the dictionaries. The phrase, "In respect of" was construed in Venkataramaiya's Law Lexicon (Vol.2 page 1089 - Second Edition) to mean that it is of the widest meaning and it has been construed to mean "relating to" or "with reference to" and the words "in respect of" has wide connotation. The expression "matter" was considered in Anderson's Dictionary of Law to mean the subject of legal action, consideration, complaint or defence or the fact or facts constituting whole or part of a ground of action or defence.

16. The expression “matter” is defined in the New Oxford Dictionary English page 1143 to mean the situation under consideration. The expression “matter” was considered in Webster’s Third International Dictionary to mean a topic under active and serious or practical consideration. The word “matter” has been considered in the Law Lexicon by P.Ramanatha Aiyar and observed as of wider import than particulars and would also comprehend the grounds on which the subject is taken for consideration. In other words the words found in the phrase in respect of matters covered by the objections have been considered in various dictionaries as the terms of the widest connotation possible. We hold that in the context in which the words are found in section 144B of the Act, they are not employed in a restrictive sense.

17. Now let us consider the various decisions cited by the learned counsel for the parties. Mr.R.Meenakshisundaram, learned counsel for the assessee relied upon the decision of the Calcutta High Court in "ASIATIC OXYGEN LTD., .VS. COMMISSION E TAX" (190 I.T.R. 328). In the case before the Calcutta High Court the assessee had incurred the expenditure in the preparation of a report in connection with the project and the Income Tax Officer allowed the expenditure on the raw materials in the draft assessment order. The assessee raised objections with reference to the other matters, the Inspecting Assistant Commissioner disallowed the expenditure allowed by the Income Tax Officer in the draft assessment order and directed the amounts

to be added as income of the assessee. The Calcutta High Court held that since in the draft assessment order the amount claimed as expenditure was not disallowed by the Income Tax Officer, the question of disallowance of the amount could not have been covered by the objections of the assessee and therefore, the direction given by the Inspecting Assistant Commissioner to enhance the assessment was not lawful. This decision has no application at all as in the case before the Calcutta High Court the question of disallowance of the amount was not one of the matters covered in the objection raised by the assessee and therefore, the Calcutta High Court found no difficulty in holding that the Inspecting Assistant Commissioner lacked the jurisdiction to issue direction under Section 144B of the Act. Though the Calcutta High Court has held that the Inspecting Assistant Commissioner under Section 144B of the Act has no jurisdiction to issue direction to the extent as it was not covered by the draft order, the ratio of the decision of the Calcutta High Court is that in respect of the matters covered by the objections raised by the assessee, the Inspecting Assistant Commissioner has the jurisdiction to issue the direction.

18. Learned counsel for the assessee also referred to the decision of the Calcutta High Court in BENGAL AND ASSAM INVESTORS LIMITED . VS. COMMISSIONER OF INCOME TAX" (142 I.T.R. 156). The Division Bench of the Calcutta High Court held that the directions issued by the Inspecting Assistant Commissioner under Section 144B(4) on items not covered by a draft assessment order will be invalid to the extent as it was not covered by the draft order. We have carefully gone through the judgment of the Calcultta High Court and the Court was dealing with the situation where the direction was issued in respect of a matter not covered in the objection raised by the assessee and hence, is not applicable to the facts of the case.

19. In "ARRAH SASARAM LIGHT RAILWAY CO.LTD.,.VS. COMMISSIONER OF INCOME TAX' (204 I.T.R.807), the Calcutta High Court was dealing with the case of a draft assessment made on the basis of the directions issued under Section 144A of the Act and the question arose whether the Income Tax Officer was bound to refer the matter under Section 144B of the Act if the proposed addition to the income return exceeds the amount notified? We have carefully gone through the judgment of the Calcutta High Court and we find that the que stion that arose before the Calcutta High Court was entirely different and the question was whether the operation of the provisions under Section 144A would exclude the operation of Section 144B of the Act. The Court held that the provisions of sections 144-A and 144-B are procedural in nature and both provide for pre assessment review and the court was not considering the case where the Inspecting Assistant Commissioner has dealt with the matter not covered in the objection raised by the assessee. This decision is distinguishable on the facts of the case.

20. In "COMMISSIONER OF INCOME TAX .VS. ROHIT MILLS LIMITED" (236 I.T.R.436), the Gujarat High Court has considered the provisions of Sections 144A and 144B of the Act. The question that arose before the Gujarat High Court was whether the Inspecting Assistant Commissioner has the power to issue directions under Section 144B of the Act when the draft assessment order was referred to the Inspecting Assistant Commissioner by the Income Tax Officer and when the draft assessment order was made on the basis of the directions issued under Section 144 A of the Act. The Gujarat High Court has dealt with the powers of the Inspecting Assistant Commissioner under Section

144B of the Act and held that in respect of the matters already covered under objections of the assessee in the draft order, there is no need for the Inspecting Assistant Commissioner to issue directions under Section 144A of the Act since he would have the power to issue directions under Section 144(B)(4) of the Act to enable the Income Tax Officer to complete the assessment. It could be seen from the above observation of the Gujarat High Court that in respect of the matters already covered in the objections, the Inspecting Assistant Commissioner has the power to act under Section 144B instead of resorting to Section 144A. The above decision is not of any help to the assessee. The decision of the Gujarat High Court is also in favour of the Revenue in the sense that it will be open to the Inspecting Assistant Commissioner to invoke the powers either under Section 144A or under 144B of the Act for the purpose of proper assessment of the income.

21. In " AMBIKA MILLS LTD., .VS. COMMISSIONER OF INCOME TAX" (235 I.T.R.264), Gujarat High Court also held that Section 144B is a procedural provision. The Gujarat High Court also held that it gives wide power to the Inspecting Assistant Commissioner to issue directions in reference to the matters covered by the objections for the guidance of the Income Tax Officer to enable him to complete the assessment. This decision hardly helps the assessee. On the other hand, we find that it supports the case of the Revenue. One of the objections raised by Mr.R.Meenakshisundaram, learned counsel was that the Incometax Officer has forwarded certain amounts to the Inspecting Assistant Commissioner at the time of finalisation of issue of directions. The Gujarat High Court held that until the assessment is completed by the Income Tax Officer under Section 144(B) of the Act, he remains free to exercise the power to complete the assessment and the draft order of assessment does not create any right in favour of the assessee to prevent the Income Tax Officer from revising such proposed order so long as the assessee was given an opportunity to raise objection against it. We are in respectful agreement with the view expressed by the Gujarat High Court and we hold that the Income Tax Officer is free to send his proposal to his draft assessment order and no prejudice is caused to the assessee as the assessee is given an opportunity to raise his objection to the proposed addition made by the Income Tax Officer.

22. Mr.T.C.A.Ramaujuam, learned senior standing counsel for the Income Tax Department relied upon the decision of the Supreme Court in "PANCHAMAHAL STEEL LTD., .VS. U.A. JOSHI, ITO,AND ANOTHER" (225 I.T. R.458) and the decision of the Kerala High Court in "ASPINWALL AND CO.,LTD., .VS. COMMISSIONER OF INCOME TAX (No.2)" (220 I.T.R. 617) and also the decision of the Bombay High Court in COMMISSIONER OF INCOME-TAX v. MRS. RATANBAI N.K.DUBHASH (230 ITR 495) . We have gone through the decisions. The Courts have held that section 144-B of the Act is a procedural provision and should be literally construed. But, the decisions do not decide the issue that arises in the present case.

23. A careful reading of Section 144B shows that the Inspecting Assistant Commissioner has no jurisdiction under Section 144B of the Act to issue direction with reference to a source of income which was not disclosed in the return or a source of income which was not considered by the Income Tax Officer in the draft assessment order. It is necessary to bear in mind that Section 144B has been introduced to safeguard the interest of the assessee by preventing the high pitch assessment and to have a fair play in

the finalisation of assessment, a higher officer is associated in the pre-assessment stage so that the additions which are not warranted or the disallowance which are not justified can be considered and suitable directions can be given. Unlike the Appellate Authorities who step into the assessment after the order of assessment is made, the Inspecting Assistant Commissioner is empowered to associate himself in the pre assessment stage itself and it is necessary to emphasise here that the jurisdiction and competence of the Inspecting Assistant Commissioner extend not only to the draft order, but he has jurisdiction to issue direction in respect of the matters covered by the objections raised by the assessee. In other words if there is something in the draft order of assessment to show that the Income Tax Officer has applied his mind to a particular subject matter for a particular source of income for which the assessee has raised his objections against the taxability of the particular subject matter before the Inspecting Assistant Commissioner, then the Inspecting Assistant Commissioner will have the necessary jurisdiction to issue a direction in such case. In such a situation it cannot be said that he has traversed outside the draft assessment order or the objections raised by the assessee. It is also clear that he has jurisdiction in respect of the matters covered by the objection. Hence, we are unable to accept the submission of the learned counsel for the assessee that the power of the Ins pecting Assistant Commissioner is confined to three sums of money noticed in the draft order of assessment. Moreover, a careful reading of the draft order of assessment shows that the Income Tax Officer considered the assessment of income from the race horses and the assessee has not given complete details as to how it claimed losses or as to how it claimed expenditure in the maintenance of the horses. The assessee along with the objection produced the books of account with reference to the same source of income which was under consideration of the Income Tax Officer and which were covered in the objections raised by the assessee. The Inspecting Assistant Commissioner found that the receipt from the sale or lease of horses was required to be added in the total income of the assessee for the purpose of assessment. In other words the topic under consideration or the subject matter of consideration before the Income Tax Officer was the income from horse racing and therefore, it cannot be said that the Inspecting Assistant Commissioner has travelled beyond the scope of the draft order of assessment. The assessee in his objection to the draft order of assessment had referred to two accounts and had also referred to the amounts received on sale of the horses . The assessee also referred to the income derived by of lease of the horses in the objection. Hence it can be safely stated that in the objection raised by the assessee, the assessee has referred to the receipt by way of sale or lease of the race horses and therefore, it cannot be stated that the Inspecting Assistant Commissioner lacked jurisdiction to deal with the matter covered in the objection raised by the assessee. We find that the direction given by the Inspecting Assistant Commissioner was in respect of the income derived in respect of horses owned and maintained by the assessee. We therefore hold that the Inspecting Assistant Commissioner did not act beyond his jurisdiction in issuing direction under Section 144B of the Act in respect of the income arising from the sale or lease of the race horses. Accordingly, we hold that the question of law referred by the assessee is required to be answered against the assessee and in favour of the Revenue.

24. As far as the reference at the instance of the Revenue is

concerned, we hold that the Appellate Tribunal has rendered the finding that the income derived by the assessee from the lease or sale of horses arose out of a hobby without any material or without any evidence in support of the case. The facts of the case are clear that the assessee has been systematically doing business in running the race horses and receiving income as stake money and also by way of sale or lease of the race horses. The assessee has maintained the race horses for racing in Madras Race Club as well as in Bangalore Turf Club involving expenditure in the maintenance of race horses. In other words, the assessee was engaged in a systematic activity in the maintenance of race horses and earning income therefrom. The reply of the assessee to the draft assessment order clearly shows that in so far as the Madras Race Club is concerned, there were two accounts one racing account and another breeding account and both the accounts disclosed the periodical activity of the assessee in earning the income by way of lease or sale of the race horses. Moreover, the entries in the account book of the Bangalore Turf Club showed the receipts by way of sale or lease of the horses. In other words there were sufficient materials before the Income Tax Officer as well as before the Inspecting Assistant Commissioner to show that there was a regular, systematic and organised activity by the assessee in earning income by the sale and lease of the race horses. The Inspecting Assistant Commissioner has found on the basis of the records that the Kartha of the family was interested in racing and maintaining race stables for the past three generations and there were 11 horses in the stable, three in racing and 8 in Stud Farm including the mares and offspring. She has also found that the maintenance of race horses is a a highly specialised field of activity requiring an extensive and deep knowledge of the race horses including the need to determine their speed when they compete in races and to assess their performance in the competitive field of horse racing. A great deal of energy and time is required to be spent to maintain the race horses and to earn the income therefrom. The Tribunal has completely ignored all the materials and has drawn its own imagination to hold that there were no materials to indicate that those activities were carried on for purposes of earning income. We hold that the observation of the Tribunal was made against the materials available on record and it is clear that the assessee had engaged in the business activity and it has not maintained race horses out of the pride of possession to own the race horses, but has participated in the races not as a hobby. The observations of the Tribunal that men of means take pride of possession of the race horses and participate in the horse races and those activities would amount to hobby are of general observations and they are inapplicable to the facts of the case. A reading of the Tribunal order clearly shows that it has readily come to the conclusion that the activity of the assessee was a hobby without any iota of material. The Tribunal has overlooked the fact that the assessee was carrying on the activity of maintenance and earning income which a normal commercial man would do in the circumstances. It is relevant to note here that the Tribunal in the appeals for the subsequent years in the assessee's own case has taken a different view and held that there was a systematic activity carried on by the assessee in carrying on the business. We therefore hold that the Tribunal has completely misdirected itself in holding that the assessee carried on the activity of maintaining the horses and earning income therefrom as a hobby and not as a business activity. We further hold that all further directions given by the Tribunal on the basis

that the activity is a hobby are also not in accordance with the law.
25. The Tribunal also referred to Section 74A (A) of the Income Tax Act,1961. Section 74A(2) refers to computation of income to be made in respect of activity of owning and maintaining race horse. This Court in "COMMISSIONER OF INCOME TAX .VS. M.A.CHIDAMBARAM" (243 I.T.R.2 60) considered the provisions of Section 74A of the Act in the case of race horse and expenditure incurred by the owner of the race horse on the maintenance and held that the losses if any should be carried forward in the manner provided under Section 74A(3) of the Act. Probably we would have remitted the matter to the Appellate Tribunal to consider the applicability of section 74-A of the Act in the light of the decision in COMMISSIONER OF INCOME TAX .VS. M.A.CHIDAMBARAM (243 I.T.R. 260), but however, the Appellate Tribunal in the assessee's own case for the assessment years 1979-80 to 1983-84 has held the income arising from the sale and lease of the horses would be assessable under the head "business" and not under the head "other sources". The Revenue has not challenged the finding of the Appellate Tribunal for the subsequent years and the finding of the Appellate Tribunal has become final. We are of the opinion that if the matter is remitted for re-consideration of the order of the Appellate Tribunal for the assessment year 1978-79 alone, the interest of justice will not be met as for one year it may be assessed under the head "other sources" and for the subsequent years the income has already been held to be assessable under the head "business". We have noticed that the assessment year involved is 1978-79 and at this distance of nearly 24 years after the end of the said assessment year, if the matter is remitted to the Tribunal to consider the head under which the income is assessable, the remand will be futile. In this view of the matter, we hold that the income from the sale or lease of the horses should be assessed under the head "business".
26. The Appellate Tribunal also considered the question whether there was any capital gain arising on the sale of the horses and the Tribunal found that there was no cost of acquisition for the colts or fillies and hence, the assessee is not liable to be charged under the head "capital gain". We find that in the assessment year 1978-79 there was no income arising from the sale of the horses and the Tribunal should not have entered into the question of taxability of capital gain as if there was a gain. There was income from the sale of the horses in the years 1979-80 and 1980-81 and in the year 1981-82 the assessee has purchased and sold the horses and in 1982-83 also the assessee has derived income by way of lease of the race horses and in 1983 -84, the assessee derived income from the lease of the horses. In the view we have taken that the receipts arising from the sale and lease of the race horses are assessable under the head "business", the finding regarding the cost of acquisition does not assume importance when the receipts are assessable under the head "business". We are therefore of the view that the first question of law required to be answered in favour of the Revenue and against the assessee and the second question is not required to be answered.
Accordingly,we answer the questions as under:-
i) T.C.No.209/86: Question referred at the instance of the assessee:- Answered against the assessee and in favour of the Revenue.
ii) T.C.No.210/86: Questions referred at the instance of the Revenue:- Question No.1 is answered in favour of the Revenue and against the assessee. In view of our answer to question No.1, the question No.2 is not answered.

We hold that the Revenue is entitled to cost of Rs.500/- one set. We appreciate the efforts taken by Mr.Meenakshisundaram as also by the Government counsel in the matter.

Index:Yes
Website: Yes
nyr/na

To
1.The Assistant Registrar,Income Tax
Appellate Tribunal, Rajaji Bhavan
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3.The Commissioner of Income Tax,(Appeals) IV, Madras.34.
4.The Commissioner of Income Tax, Tamil Nadu-I, Madras.
5.The Income Tax Officer, Company Circle I (2), Madras.